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REMARKS

Reconsideration is respectfully requested in view of the remarks herein.

Claims 1-9 stand rejected under 35 U.S.C. 103(a) as being obvious over Blatz (U.S. Pat. No. 5,770,654) in view of Hedrick et al. (U.S. Pat. No. 3,419,517).

Claim 1 is directed to a thermoplastic polyamide composition comprising: (a) from about 5 to about 30 weight percent of a free-flowing toughener comprising from about 20 weight percent to about 95 weight percent polyvinyl butyral; (b) 95 to 25 weight percent polyamide that is melt processible below about 320°C and a number average molecular weight of at least 5,000; (c) a mineral filler in an amount of from about 10 to about 45 weight percent of the total composition; and (d) optionally a coupling agent. Claim 8 is directed to an article prepared from the composition of Claim 1.

The first Action states that Blatz discloses all of the claimed features of the present invention except that Blatz does not describe a polyamide composition comprising a mineral filler. The Examiner points to Hedrick to supply the teaching of mineral fillers for polyamide compositions, stating that one of ordinary skill in the art would be motivated by an expectation of success to combining the two references and thereby obtain the Applicant's claimed invention.

The final Action states that applicants' arguments filed February 23, 2005 are not considered persuasive. The final Action focused on two points made in applicants' response. First, the Action dismisses applicants' arguments concerning Blatz and Hedrick being improperly combined. The general gist of the Action is that use "consisting essentially of" in Blatz is focused on a preferred embodiment. Second, the Action seems to dismiss applicants' arguments pertaining to Notch Izod properties on the basis that the combination of references is strong.

Applicants traverse the rejection for the reasons that (a) the Action improperly combines the two cited patents, improperly reconstructing the invention through hindsight and ignoring the express language of Blatz.

First, applicants point out that Blatz is specifically directed to an unfilled composition. Blatz's use of "consisting essentially of" to describe the Blatz composition in the Summary of the Invention shows Blatz's intention to describe the specific composition described therein, not merely a preferred embodiment.

Blatz discloses polyamide compositions that consist essentially of plasticized polyvinylbutyral and polyamide. These compositions do not include filler.

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Most notably, the Summary of the Invention of Blatz uses the transitional phrase "consisting essentially of" in describing the Blatz composition. The Summary of the Invention of a patent describes the invention in the broadest terms contemplated by the inventors and is not merely focused on a preferred embodiment as asserted in the Action.

Here, it is very important to focus on the fact that the phrase "consisting essentially of" appears in the Summary of the Invention, not just in the claims, and that the phrase is used in the first description of the invention, not in describing a preferred embodiment. This shows the intent of the inventors to limit the scope of the invention to the specified materials and those that do not materially affect the basic and novel characteristic(s) of the claimed invention. See, e.g., MPEP 2111.03.

In this regard, applicants strongly assert that addition of 10% or more of mineral filler materially affect the basic and novel characteristic(s) of the claimed invention, and point to the examples in support of this point.

The fact that the Summary of the Invention describes the invention, not simply a preferred embodiment, can be seen from 37 CFR 1.73 and MPEP 608.01(d). A Summary of the Invention is required in a patent application according to 37 CFR 1.73, which states:

"A brief summary of the invention indicating its nature and substance, which may include a statement of the object of the invention, should precede the detailed description. Such summary should, when set forth, be commensurate with the invention as claimed and any object recited should be that of the invention as claimed."

MPEP 608.01(d), describes the Summary of the Invention portion of a patent application as follows:

"Since the purpose of the brief summary of invention is to apprise the public, and more especially those interested in the particular art to which the invention relates, of the nature of the invention, the summary should be directed to the specific invention being claimed, in contradistinction to mere generalities which would be equally applicable to numerous preceding patents. That is, the subject matter of the invention should be described in one or more clear, concise sentences or paragraphs. ..."

"The brief summary, if properly written to set out the exact nature, operation, and purpose of the invention, will be of material assistance in aiding ready understanding of the patent in future searches. ..."

Given the fact that Blatz uses the transitional phrase "consisting essentially of" in the first description of the invention in Blatz's Summary of the Invention, the

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invention of Blatz was clearly intended to exclude items such as filler. The Summary of the Invention is not merely describing a preferred embodiment, it is describing the invention itself. Therefore, the cited patents can not be combined as in the rejection, and for this reason alone the rejection is an improper hindsight rejection.

Second, applicants point out that Hedrick is describing a composition comprising nylon and mineral filler, but does not teach use of from about 5 to about 30 weight percent of a free-flowing toughener comprising from about 20 weight percent to about 95 weight percent polyvinyl butyral. There is nothing in either reference that would indicate the compatibility of the toughener in filled systems, and thus there is nothing that would motivate the person of ordinary skill in the art to combine the cited patents as in the rejection. Thus, applicants submit that the rejection is based upon an improper hindsight reconstruction of the invention using an improper obvious to try standard.

For the above reasons, applicants respectfully request withdrawal of the rejection of claims 1-9 as obvious over Blatz in view of Hedrick.

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In view of the foregoing, allowance of the above-referenced application is respectfully requested. Should any matter remain unresolved by this Response, the Examiner is invited to telephone the undersigned at the below-listed direct dial telephone number in order to expedite prosecution.

Respectfully submitted,



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